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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,843	12/12/2003	Russell Evan Thorson	19,519	1966
23556 7590 01/18/2007 KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			EXAMINER MAYES, MELVIN C	
			ART UNIT 1734	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		NOTIFICATION DATE	DELIVERY MODE	
3 MONTHS		01/18/2007	ELECTRONIC	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 01/18/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Kimberly-Clark.Docket@kcc.com  
catherine.wolf@kcc.com

## Office Action Summary

Application No.

10/734,843

Applicant(s)

THORSON ET AL.

Examiner

Melvin Curtis Mayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Terminal Disclaimer***

(1)

The terminal disclaimer filed on November 7, 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent Nos. 7,018,369 and 6,979,380 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Claim Rejections - 35 USC § 112***

(2)

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

(3)

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 10 and 16 recite the limitation "said pair of side seams." There is insufficient antecedent basis for this limitation in the claim. There is only claimed "a pair of seams."

***Claim Rejections - 35 USC § 103***

(4)

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(5)

Claims 1-4, 6-11 and 13-20 are rejected under 35 U.S.C. 103(a) as being obvious over Thorson et al. 6,979,380 in view of EP 1 240 881 and WO 96/08224.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Thorson et al. disclose a method of making a disposable undergarment comprising: cutting a web of body panel material along a longitudinal machine direction forming a rear body

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panel web and a front body panel web each outer lateral edges; connecting a crotch member to each of said rear and front body panel web thereby bridging the gap therebetween; applying an elongated (stretched) elastic waist band to one or both of the front body panel webs adjacent the outer lateral edge thereof; folding such that the webs are overlapping with outer edges aligned; bonding to form side seams; and cutting to form undergarments. Thorson disclose elongating or stretching the web of body panel material to its maximum capability (stretched to stop) between 20% and 400% before it is cut to form the front and rear body panel webs (thus resulting in the front and back panel webs having been stretched between 10% to 500%, 50% to 300% or 75% to 270% before the elastic is applied and before the crotch member is connected to the panel webs as claimed) (col. 3-14). Thorson et al. do not disclose applying the elastic waist band so as to be cantilevered outward from the outer lateral edge of either the front or rear (back) body panel web or providing the crotch member as an absorbent assembly including a liquid pervious bodyside liner, a liquid-impervious outer cover and an absorbent positioned therebetween.

EP 1 240 881 teaches that pants-type diaper made by providing first and second web halves from which front and back panels of the diaper are to be formed, placing and bonding an absorbent pad between the webs having, folding, bonding the web halves and cutting to form the diaper are provided with absorbent pad comprising a liquid pervious topsheet (bodyside liner), a liquid-impervious backsheet (outer cover) and liquid-absorbent core disposed therebetween.

WO 96/08224 teaches that in providing a disposable absorbent garment with an elastic waistband, elastic waistband member of width of 1-8 cm may be provided to the edge such that a portion of the waistband extends beyond the peripheral edge of the waistborder (Fig. 5B).

It would have been obvious to one of ordinary skill in the art to have modified the method of Thorson et al. for manufacturing a disposable undergarment by providing the crotch member as an absorbent pad comprising a liquid pervious topsheet (bodyside liner), a liquid-impervious backsheet (outer cover) and liquid-absorbent core disposed therebetween, as taught by EP '881, for forming a pants-type diaper from first and second webs and a separate absorbent crotch. Applying the elastic waist band of width of 1-8 cm to either the front or rear (back) body panel web as extending outwardly from the edge of the web would have been obvious to one of ordinary skill in the art, as WO 96/08224 teaches that a disposable absorbent garment can be provided with an elastic waistband by providing an elastic waistband member to the edge such that a portion of the waistband extends beyond the peripheral edge.

Securing the elastic band to either the front or back panel web before, after or at the same time as securing the absorbent assemblies would have been obvious to one of ordinary skill in the art.

### ***Response to Arguments***

(6)

Applicant's arguments filed November 7, 2006 have been fully considered but they are not persuasive.

Applicant argues that Thorson '380 does not teach applying elastic band cantilevered outward from either of the webs, providing the crotch member as absorbent assembly as claimed, attaching elastic band after stretching the first and second web. Applicant argues that EP '881 does not teach applying elastic band or attaching after stretching the webs and argues that

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WO '224 shows elastic around the entire waist opening, not secured to only one of the webs as claimed.

(7)

Stretching of the webs is disclosed by Thorson '380 and the particular absorbent assembly as claimed is taught by EP '881. While WO '224 does show elastic around the entire waist opening, it is Thorson that discloses that elastic can be on either, or both, of the front and rear body panel webs. Thus providing the elastic band as cantilevered, as taught by WO '224, on only one web, as disclosed by Thorson '380, would have been obvious to one of ordinary skill in the art.

***Conclusion***

(8)

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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(9)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin Curtis Mayes whose telephone number is 571-272-1234.

The examiner can normally be reached on Mon-Fri 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached on 571-272-1187. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Melvin Curtis Mayes  
Primary Examiner  
Art Unit 1734

MCM  
January 9, 2007